

Incorporated associations - Tasmania

Managing your association

Management

The way in which an association operates is largely governed by its rules/constitution.

Generally the rules will provide for members of the association to elect a committee of management and for the management of the affairs of the association to rest with the committee. In addition to providing for a Chairperson, the rules often make provision for the committee to include a Secretary and a Treasurer. Sometimes these positions are given different titles e.g. President instead of Chairperson.

The Chairperson presides at meetings of members of the association and of the committee.

The Secretary is normally responsible for all general correspondence. He or she should maintain adequate correspondence files and bring relevant correspondence before the committee for consideration. The Committee frequently appoints the Secretary as the associations **Public Officer**.

The Treasurer normally attends to the banking of the association's income and recording transactions in the association's books and records. He or she should provide regular financial reports to the committee. The Treasurer should also prepare the association's financial reports and statements for consideration and adoption by the committee before they are presented to members.

Officer Responsibilities

There are a number of areas where the Committee and Public Officer of an incorporated association have particular responsibilities in administering the affairs of their association. These areas relate to:

Breaches of Legislation

What to report

If you believe there has been fraud, dishonesty or misconduct in a Tasmanian association that is a possible breach of the *Associations Incorporation Act 1964* (the Act), you should report the matter to Consumer Affairs and Fair Trading (CAFT).

Before doing so, please read the following information to ensure the matter is one that can be addressed by CAFT.

What CAFT investigates

CAFT is concerned with the public duties of associations. These are the duties and obligations placed on an association or its officers by the Act. These duties include the following requirements:

- an association must lay audited accounts, the auditor's report, and a list of the committee, before members at the annual general meeting, within six months after the end of the financial year (s 24);
- an association must lodge the above documents with CAFT, within 6 months after the end of the financial year (s 24);
- an incorporated association must keep and maintain accounting records (s 23A).

As a consequence, CAFT has various investigation powers under the Act that may be exercised to ascertain whether the provisions of the Act have been or are being complied with.

However, CAFT does **not** investigate the following matters:

- A breach of an association's rules (e.g. in relation to the internal organisation or administration of the association).
 - The rules are a means for an association to manage or administer its affairs i.e. it's self-governance.
 - Non-compliance with the rules of an association is a private or civil matter to be pursued by the parties bound by the rules i.e. the association and its members.
- Disputes between a member and another member; or a member and the association.
 - It is not a function of CAFT to adjudicate on matters concerning the rights of members. These are matters that should be dealt with by the parties to the dispute.
- Theft by employees of an association that does not involve a possible breach of the Act.
 - These are usually matters that should be referred to Tasmania Police.
- Reports that indicate there is little likelihood of CAFT obtaining admissible, substantial and reliable evidence to prove the allegations.
 - CAFT cannot take action based merely on conjecture or assumptions, or unsupported reports.

Reports of Suspected Breaches

Written reports of suspected breaches of the Act should be made to CAFT and should include:

- the name of the association, and its registration number (if known);
- the names of the persons suspected of wrongdoing;
- full details of the misconduct including the actions, dates and places in sequential order;
- if known, the provisions of the Act that may be relevant;
- any relevant documentary material that may be used as evidence, such as letters or minutes;
- the names and addresses of the persons who may have witnessed, or have information concerning, the suspected conduct or activity;
- any report by an expert, e.g. an accountant or auditor, provided to the association in relation to the alleged conduct;
- reference to any other authority that has been approached, e.g. the Tasmanian Police, and what action the authority has or may be taking. If the person has been convicted of an offence in relation to the matter as a result of police intervention, include any relevant documentary material.

What will happen

CAFT will acknowledge receipt of the report in writing within seven days and will provide the name and telephone number of the officer assigned to the matter.

CAFT may ask you:

- for further information either informally or formally; or
- to provide assistance, e.g. as a witness.

Investigation priorities

CAFT gives priority to complaints according to the seriousness of the conduct identified. CAFT will take into account whether there was any apparent fraudulent activity involved, the potential for ongoing harm or continuing breach, and the nature and extent of any public interest in the affairs of the association.

Steps CAFT may take in assessing reports

Having considered a report and determined the priority of the matter, CAFT may take the following steps:

- make initial inquiries to gather more information about the matter;
- conduct a formal investigation under the Act;
- take no further action and write to the complainant informing the person why no further action will be taken.

Where the matter is not one that CAFT investigates, e.g. in relation to a dispute between a member and the association, a response is usually provided within 28 days of receipt of the complaint. Consideration of matters that involve a potential offence under the Act may take longer.

Other available remedies

There are a number of courses of action available to an association or its members where CAFT is unable to investigate the matter reported. Some of these are outlined below:

- There are a number of books available that describe good management and administrative practices including the proper conduct of meetings, which may provide help to resolve an administrative breach, for example.
- If members believe that the association's affairs are not being conducted in accordance with their wishes, the members may consider calling a meeting of members to discuss the issue and decide on an appropriate course of action.
- If the matter concerns a dispute, the parties may consider meeting to resolve the dispute, or if it cannot be resolved at a meeting, the parties may choose to meet and discuss the dispute in the presence of an independent third person agreed to by the parties.
- The association may consider the inclusion of a suitable dispute resolution procedure in the rules of the association.
- A member may pursue remedies with the Supreme Court or the Magistrates Court.
- Where the rules are clearly deficient, e.g. in dealing with the internal organisation or administration of the association, the association may consider members' approval of an alteration to the rules.
- The association may consider seeking legal or other professional advice in relation to the matter. It is not a function of CAFT to provide private legal advice on such matters.

Changes to Rules

A change in the rules of an association can only be effected by special resolution.

Section 23 provides that a special resolution is one which is passed by not less than three-quarters of such members who are present at a general meeting of which notice specifying the intention to propose the special resolution was given in accordance with the association's rules. Accordingly, proxy voting is not permissible for special resolutions.

Where a special resolution is passed the public officer must, within one month, lodge notice with the Commissioner. There are a number of Special Resolution forms available, as follows:

- Change of Name
- Change Financial Year
- Deregistration of an Association
- Amalgamation
- Change to rules/constitution.

Amalgamation

Two or more incorporated associations may, by special resolution of their respective members, resolve to amalgamate to form a new association. For the meaning of special resolution refer to [Changes to Rules](#).

An application for amalgamation must be made on the [appropriate form](#). Lodgement must be made within one month of the earliest resolution passed by the amalgamating associations.

The Public Officers of both (or all) the amalgamating associations are required to sign the application.